

SDMS Document



95968

WATERS, MCPHERSON, MCNEILL

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

SECAUCUS - TRENTON - NEW YORK

MEADOWLANDS OFFICE

300 LIGHTING WAY

P.O. BOX 1560

SECAUCUS, NEW JERSEY 07096

(201) 863-4400

www.lawwmm.com

TELECOPIER

201-863-2866

♦ TELECOPIER COVER SHEET ♦

DATE: 6/15/05

TIME: _____

TO: Kedari ReddyFROM: Steven R. GrayTELECOPIER NUMBER BEING CALLED: 212-637-3096WE ARE TRANSMITTING A TOTAL OF 3 PAGES, INCLUDING THIS COVER SHEET.RE: FURTHER RESPONSE to EPA Demand Letter

IF YOU DO NOT RECEIVE THE INDICATED NUMBER OF PAGES, PLEASE CALL US AT (201) 863-4400 (EX. 206) AS SOON AS POSSIBLE SO THAT WE MAY CHECK IT FOR YOU.

CLIENT NO./MATTER: 5778-35**- CONFIDENTIALITY NOTE -**

THE INFORMATION CONTAINED IN THIS TRANSMISSION IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE SO THAT WE CAN ARRANGE FOR THE RETURN OF THE ORIGINAL DOCUMENTS TO US AT NO COST TO YOU.

959680001

WATERS, MCPHERSON, MCNEILL

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

SECAUCUS, NEW JERSEY

MEADOWLANDS OFFICE

300 LIGHTING WAY

P.O. Box 1560

SECAUCUS, NEW JERSEY 07096

201-863-4400

www.lawwmm.com

STEVEN R. GRAY

DIRECT DIAL

201-330-7459

E-MAIL

sgray@lawwmm.com

TELECOPIER

201-863-2866

June 15, 2005

Kedari Reddy, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway - 17th Floor
New York, NY 10007

Re: In the Matter of the Lower Passaic River Study Area
Portion of the Diamond Alkali Superfund Site
Agreement Under Section 122(h) of CERCLA, 42 U.S.C. Section 9622
U.S. EPA Region 2; Site Spill ID Number 02-96
CERCLA Docket No. 02-2004-2011
Our File: 5778-035

Dear Ms. Reddy:

This is in further response to the May 3, 2005 EPA Demand Letter to DiLorenzo Properties Company regarding the Lower Passaic River Study Area ("LPRSA") on behalf of DiLorenzo Properties Company, which owned the Kearny site (44 Passaic Avenue) either individually or as part of the Goldman/Goldman/ DiLorenzo (GGD) partnerships, including York Associates, from 1959 to 1992. (collectively, the "Goldman/DiLorenzo Related Companies").

The Goldman/DiLorenzo Related Companies understand that the EPA has entered into the above-referenced Settlement Agreement pursuant to Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (the "Settlement Agreement"), effective as of June 22, 2004, with thirty-one (31) companies (the "Settling Parties"). The Goldman/DiLorenzo Related Companies have been provided with a copy of the Settlement Agreement and are familiar with its terms and conditions.

In the Settlement Agreement, the thirty-one (31) Settling Parties have agreed to provide funding to EPA to conduct the Remedial Investigation/Feasibility Study ("RIFS") of LPRSA. As set forth more fully in the Settlement Agreement, EPA has agreed to waive Past Response Costs (defined in the Settlement Agreement as costs incurred by EPA in connection with the

959680002

WATERS, MCPHERSON, MCNEILL

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

Kedari Reddy, Esq.

Page 2

June 14, 2005

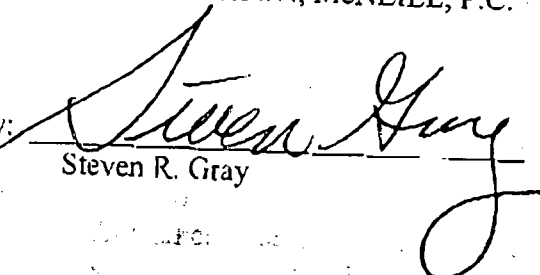
RI/TS prior to the Effective Date of the Settlement Agreement) and, upon fulfillment of the obligations set forth in the Settlement Agreement to provide a covenant not to sue to the Settling Parties for Past Response Costs and Future Response Costs (defined in the Settlement Agreement as costs incurred by EPA in connection with the RI/TS after the Effective Date of the Agreement). Thus, under the Settlement Agreement, EPA agrees that the Settling Parties have resolved, pursuant to Section 122(h) of CERCLA, 42 U.S.C. 9622(h), their liability to the United States for Past Response Costs and Future Response Costs incurred by EPA at LPRSA as provided by Section 113(f)(3)(B) of CERCLA, 42 U.S.C. 9613(f)(3)(B). In turn, the Settling Parties have agreed to provide ten million (\$10,000,000.00) to EPA for its Future Costs. The Settling Parties have reserved all defenses available under the law, and the EPA has reserved all of its CERCLA enforcement authorities above ten million dollars (\$10,000,000.00). EPA is considering a proposal to permit up to twelve (12) additional companies to sign onto the Settlement Agreement, with minor revisions as necessary to allow for the inclusion of the additional twelve (12) settlers.

Based upon the foregoing representations, Goldman/DiLorenzo Related Companies hereby state that they intend to join the LPRSA Cooperating Parties Group as one entity and to sign onto the Settlement Agreement, with minor revisions as necessary to allow for the inclusion of the additional twelve (12) settlers. The Goldman/DiLorenzo Related Companies are represented in this matter by Martin Wasser, Esq. of Phillips Nizer LLP and by my firm, Waters, McPherson, McNeill, P.C.

Very truly yours,

WATERS, MCPHERSON, MCNEILL, P.C.

By:


Steven R. Graycc: Deborah Mellott, Esq.
Bill Hengemihle
Martin B. Wasser, Esq.